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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|--|-------------|-----------------------|----------------------|------------------|
| 10/654,165   | 09/03/2003  | Michael Lane Mitchell | TI-35215 / DDM03-035 | 4310             |
| 23494  | 7590        | 03/23/2006            | EXAMINER             |                  |
| TEXAS INSTRUMENTS INCORPORATED<br>P O BOX 655474, M/S 3999<br>DALLAS, TX 75265 |             |                       | CUNNINGHAM, TERRY D  |                  |
|  |             |                       | ART UNIT             | PAPER NUMBER     |
|  |             |                       | 2816                 |                  |
| DATE MAILED: 03/23/2006  |             |                       |                      |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/654,165

**Applicant(s)**

MITCHELL, MICHAEL LANE

**Examiner**

Terry D. Cunningham

**Art Unit**

2816

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Last Action Vacated***

The Action mailed 03 March 2006 included a typographical error in the Double Patenting rejection. Therefore, the previous action has been vacated in lieu of the following corrected action. The Shortened Statutory Period for response is hereby restarted upon mailing of this action.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-20 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of copending Application No. 10/640,981. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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***Claim Rejections - 35 USC § 112***

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 15-16, it is deemed misdescriptive to claim that the “output signal” controls the “processor device” only “during startup”. While similar phraseology is used in the specification, the specification clearly established that the “output signal” Vout prevents the “processor device” from operating during “startup” and allows it to operate normally thereafter (see the paragraph linking pages 5-6 of the specification). As seen, the “output signal” is always controlling the “processor”.

Claims 2-8 are rejected as including the indefiniteness discussed above with claim 1.

Claims 9-20 are rejected for similar reasons as claims 1-8.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagano (USPN 4,754,166).

With respect to claims 1-16, the reference to Nagano discloses, in Fig. 1, a circuit comprising: “a first signal-treating circuit (R3 and C)”; “a voltage supply signal (VCC)”; “a first treated signal (B)” being “a time-delayed representation of said voltage supply”; “a second

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signal-treating circuit (R1 and R2)”; “a second treated signal (A)” being “a non-delayed representation of said voltage supply signal”; and “a comparing unit (11)...generating an output signal (RS)”, all connected and operating similarly as recited by Applicant. It is noted that the recitation concerning the “processor device” is deemed intended use or mere functional language.

With respect to claims 9-20, clearly the above circuit to Nagano will provide the recited method.

Examiner has fully considered Applicant’s remarks for the above rejection and has not found them to be persuasive. Applicant argues concerning “intended use”, however, line 1 of claim 1, for example, expressly states that the overall “apparatus” is “for effecting a controlled startup of a processor device”. Thus, it is abundantly clear that the “processor device” is not part of the “apparatus” that is claimed. Therefore, it can only be reasonably seen that an operation with regard to the “processor device” would be mere intended use. Further, the above rejection also states that the language concerning the “processor device” is mere “functional language”. Reference is made to M.P.E.P. § 2114 which discussed “functional language”.

Applicant is reminded that since a Final Rejection has already been made in this case, a new Appeal Brief can be filed at any time.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terry Cunningham whose telephone number is 571-272-1742. The examiner can normally be reached on Monday-Thursday from 7:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy P. Callahan can be reached on 571-272-1740. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC  
March 20, 2006

  
Terry D. Cunningham  
Primary Examiner  
Art Unit 2816